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CUBA'S CLAIMS TO THE ISLE OF PINES.

BY GONZALO DE QUESADA, FORMER MINISTER OF CUBA TO THE
UNITED STATES.

IN the September issue of *THE NORTH AMERICAN REVIEW* and under the title "Have We mislaid a valuable Possession?" the Hon. Senator M. E. Clapp attempts to revive popular interest in a question which is a closed chapter, as far as the American Executive and the American people are concerned: the alleged title of the United States to the Isle of Pines.

Nevertheless, and as there is pending before the Senate a treaty in which the matter is finally settled, it is well that Cuba's side be presented before the public and the facts rehearsed on which Cuba has always based her title to this part of her territory and on which the Supreme Court, the highest tribunal in this country and one whose impartiality cannot be questioned, opined that the Isle of Pines is Cuba's.

Considering the question from its geographical, historical, political, administrative and international point of view, the Isle of Pines has always belonged to Cuba.

The geographical term Cuba, since the first maps were made, from 1492 to 1502, to date, has included the hundreds of surrounding islets, keys and archipelagoes, such as the Canarreos in which the Isle of Pines figures, and in no case the Isle of Pines has been considered other than a part of Cuba as much as Staten Island or Long Island is a part of New York State; the keys to the southwest of Florida, extensions of the mainland; Nantucket a portion of Massachusetts, and the Isle of Wight a part of England.

This assertion can be substantiated by the examination of all the maps of all epochs since its discovery, prepared by cartographers of all nationalities. Every text-book of geography

used in the schools of this country also confirms the fact. The War Department of the United States, in its military maps, as well as those of the census taken under its direction in 1899, have the Isle of Pines as a part of Cuba, and the Navy Department in its charts and hydrographic publications has so considered it, as also the Treasury Department and the Department of Commerce and Labor in the publications of the United States Chart and Geodetic Survey.

There are almost one hundred maps in the Congressional library of Washington which contradict the statement of Senator Clapp that the Isle of Pines is not geographically a part of Cuba. These maps comprise official and private issues of Great Britain, France, Germany, Spain, Holland, Mexico, Italy and the United States and other countries, covering a period of over four centuries and at intervals of about five years, and all contain the Isle of Pines as belonging to the geographic entity of Cuba.

This geographical argument alone would bear out Cuba's contention. No less an authority than William Edward Hall, an English writer in his "International Law," said, in 1895, many years before the right of Cuba was discussed:

"The territorial property of a State consists in the territory occupied by the State community and subjected to its sovereignty, and it comprises the whole area, whether of land or water, included within the definite boundaries ascertained by occupation, prescription or treaty, together with such inhabited or uninhabited lands as are considered to have become attendant on the ascertained territory through occupation or accretion, and when such area abuts upon the sea, together with certain margin of water. . . .

"Apart from questions connected with the extent of territorial waters, which will be dealt with later, certain physical peculiarities of coasts in various parts of the world, where land impinges on the sea in an unusual manner, require to be noticed as affecting the territorial boundary. Off the coast of Florida, among the Bahamas, along the shores of Cuba, and in the Pacific, are to be found groups of numerous islands and islets rising out of vast banks, which are covered with very shoal water, and either form a line more or less parallel with land or compose systems of their own, in both cases enclosing considerable sheets of water, which are sometimes also shoal and sometimes relatively deep. The entrance to these interior bays or lagoons may be wide in breadth of surface water, but it is narrow in navigable water. To take a specific case.

"On the south coast of Cuba the Archipelago de los Canarios stretches from sixty to eighty miles from the mainland to la Isla de Pines. The

length from the Jardines Bank to Cape Frances is over a hundred miles. It is enclosed partly by some islands, mainly by banks, which are always awash, but upon which, as the tides are very slight, the depth of water is at no time sufficient to permit of navigation; spaces along these banks, many miles in length, are unbroken by a single inlet; the water is uninterrupted, but access to the interior gulf or sea is impossible. At the western end there is a strait twenty miles or so in width, but not more than six miles of channel intervene between two banks, which rise to within seven or eight feet from the surface, and which do not, consequently, admit of the passage of seagoing vessels. In cases of this sort the question whether the interior waters are, or are not, lakes enclosed within the territory must always depend upon the depth upon the banks and the width of the entrances. Each must be judged upon its own merits. But in the instance cited, there can be little doubt that the whole Archipelago de los Canarios is a mere salt-water lake, and that the boundary of the land of Cuba runs along the exterior edge of the banks."

And the same general principles of international law applicable to such coasts and shores can be seen in *Louisiana vs. Mississippi*, 200 U. S., 1, 53; the *Anna* 5 C Reb. 273.

Against this overpowering evidence it is puerile to cite as a geographical argument the fact that in a land map of the United States of 1899 the Isle of Pines was placed by the Commissioner at the verbal direction of President McKinley, for it has never been claimed that there existed a written order.

From a historical, administrative and political point of view, the evidence as to Cuba's right to the Isle of Pines is equally conclusive. The history of the Isle of Pines is a chapter in the history of Cuba, and it so appears in every authoritative history that has ever been written from the earliest time to the present day. In the same way the political division of the Spanish Kingdom called "Cuba" has always included both the island which has the specific designation "Cuba" and the island which has the specific designation "Isle of Pines," as also the hundreds of adjacent islets and keys, each of which has its specific designation, like "Cayo Romano," "Cayo Coco" and "Jardines del Rey." This is evidenced by a long series of statutes, royal decrees, orders and dispositions of the Spanish Parliament and Throne in which authority and jurisdiction were expressly conferred upon the Government of Cuba over the Isle of Pines, and by the unvaried practice during four centuries of treating the Isle of Pines as a part of Cuba, showing that the assertion of Senator Clapp

that in former times the Isle of Pines was not included in the Spanish administration of Cuba is entirely erroneous. At the time of the discovery of the Isle of Pines, in 1494, by Columbus, it was considered by the Indians themselves a part of the entity of Cuba, being the twelfth of the thirteen divisions and called "Camaraco," and when, in 1511, Diego Velazquez was appointed Lieutenant Governor his powers were "over Cuba and its dependent isles and keys." It has been a part of Havana during every one of its political administrative changes, beginning with 1511, when the whole island was but one province; in 1607 when the said Province of Havana was denominated "Western Department"; in 1827 when the Island of Cuba was divided into three departments—Eastern, Central and Western, Havana being designated by the last name; in 1850 when the Island of Cuba was again reduced to two departments—Eastern and Western, Havana being called by the second; and in 1879 when the island was divided into six provinces, as it exists to-day, and Havana province resumed its actual name.

The local Government of the Isle of Pines has always been subject to the jurisdiction of Havana; in 1765 when it was declared a "partido"—district—of Havana; in 1828 when it became "Colonia Reina Amalia" by royal decree; and in 1880 when it became an "ayuntamiento"—municipality—as it has continued to this day. Since 1855 it has been as to judicial administration—up to recently when, to facilitate transactions, a court was established in the Isle of Pines, but dependent on Havana—in the judicial district of Bejucal in the Province of Havana. As to the maritime, ecclesiastical, fiscal and military administrations, it has from the earliest date belonged to the same province. Since 1773 it has paid taxes to it in one form or another, and from 1765 it has been the object of governmental dispositions, decrees, etc., of the Captain-General of Cuba.

In every census of Cuba the Isle of Pines has been included, beginning with the first, dated 1774, and continuing with those of 1841, 1861 and 1887, and the inhabitants of the Isle of Pines went to the polls in all the elections held during the Spanish *régime*, under the electoral law for the Island of Cuba, in 1879, 1890 and 1898 when the so-called home-rule Government was decreed for Cuba; they also voted in the election for the Havana Provincial Council.

IN everybody's mind the Isle of Pines was associated with Cuba when the United States by joint resolution of April 19th, 1898, declared that the Cuban people were and of right ought to be free and independent. And these people of Cuba were the ones for which the patriots had fought and had promulgated two Constitutions—the one of Jimaguayu of September 16th, 1895, and the one of La Yaya of October 29th, 1897, both of which included in the territory of Cuba “the adjacent islands and keys.”

The Act of April 25th, 1898, declaring war against Spain was for the purpose of compelling the relinquishment by Spain of its authority and government in Cuba—which government included the Isle of Pines—and the withdrawal of its forces from Cuba and Cuban waters, in which waters was the Isle of Pines.

On August 12th, 1898, there was signed at Washington a protocol of agreement for a basis for peace between the United States and Spain which provided:

“Article I. Spain will relinquish all claim of sovereignty over and title to Cuba.

“Article II. Spain will cede to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies, and also an island in the Ladrões to be selected by the United States.”

This was followed by the Treaty of Peace ratified April 11th, 1899, containing the following articles:

“Article I. Spain relinquishes all claims of sovereignty over and title to Cuba.

“And as the island is upon its evacuation to be occupied by the United States, the United States will, so long as such occupation shall last, assume and discharge the obligations that may, under international law, result from the fact of its occupation, for the protection of life and property.

“Article II. Spain cedes to the United States the Island of Porto Rico and other islands now under Spanish sovereignty in the West Indies and the Island of Guam in the Marianas or Ladrões.”

By this treaty and the proceedings of which it was the result, the United States defended the interests of the people of Cuba, the principal one being to refuse to admit the island being saddled with the enormous so-called Cuban Debt, and as Judge Harlan put it in *Neely vs. Henkel*, U. S., 109 (Jan. 14th, 1901):

“It is true that as between Spain and the United States, indeed, as between the United States and all foreign nations, Cuba, upon the cessation of hostilities and after the Treaty of Paris, was to be treated

as if it were conquered territory But as between the United States and Cuba that island is territory held in trust for the inhabitants of Cuba to whom it rightfully belongs and to whose exclusive control it will be surrendered when a stable government shall have been established by their voluntary action."

It is this relation of trustee that would have precluded the United States—even if it were not by the noble action of the American people which had given unstintedly its treasure and blood that Cuba might be free—from taking advantage, in transactions in which Cuba had no voice, of any *ex-parte* statement of any Spanish Commissioner. The only one adduced to support the claim that the Isle of Pines belongs to the United States is far-fetched and only shows the spiteful animus of Spain toward Cuba and was a contemptible innuendo hinting at duplicity in the motives of this great country; it is as follows:

"They—the United States—did claim sovereignty over the latter—Porto Rico—and over the other islands surrounding Cuba, which will render impossible the independence of the latter, without the good-will and gracious consent of the United States, which will always have it at their mercy through their control over the islands which enclose it like a band of iron."

This claim, on the part of the United States, is not on record, nor was the contention of the Spanish Commissioners ever admitted by the American representatives.

The cession of the islands in Article II, it is clear, does not refer to the Isle of Pines under Cuba's administration at the time and does refer to Vieques, Culebra and Mona islands adjacent to Porto Rico and which, being ceded to the United States, left Spain without an inch of territory in the Western Hemisphere.

The subsequent acts of the political department of the United States were in harmony with the fact that the Isle of Pines was comprised in the term "Cuba."

Neither under Major-General Brooke, who took possession, on January 1st, 1899, of the Government of Cuba, nor under General Leonard Wood, who succeeded him, until the Republic of Cuba was inaugurated on May 20th, 1902, were the "ayuntamientos," or municipalities, disturbed, and the Isle of Pines continued as theretofore as a subdivision of the Province of Havana. Major-General Fitzhugh Lee, in obedience to orders in 1899, made a

visit of inspection to the Isle of Pines and found, as he stated in his official report, sixty Cuban insurgents under a captain there.

It was during 1899 that a few American speculators bought large parcels of land in the Isle of Pines and published glowing and exaggerated prospectuses with which they palmed off, at enormous profits, especially in the west, the divided tracts.

On August 14th, 1899, the Assistant Secretary of War, in answer to an inquiry, said, with what orders nobody knows, as he was subsequently disauthorized:

"The island was ceded by Spain and is, therefore, a part of our territory, although it is attached at present to the Division of Cuba for governmental purposes . . . and the disposition of public lands must await the action of Congress."

Yet three days after, on August 17th, 1899, President McKinley ordered a census of Cuba to be taken, and when the Island of Cuba was divided into enumeration districts the Isle of Pines was included in Cuba and three enumerators took its census. The Isle of Pines, in the official documents, was described as a municipal district of the judicial district of Bejucal, in the Province of Havana, and the Americans in the Isle knew all this and were enumerated.

In the report of the census, as published by the War Department in 1900, it is stated:

"The Government of Cuba has jurisdiction not only over the island of that name, but also over the Isle of Pines lying directly to the south of it and more than a thousand islets and reefs scattered along its northern and southern coasts."

On January 16th, 1900, an election was held throughout Cuba to elect municipal officers and the Isle of Pines elected theirs, and when on September 15th of the same year delegates were elected to the Constitutional Convention of Cuba the people of the Isle of Pines voted as a part of the Province of Havana, as it had heretofore done, and afterwards for Governor and Councilors of the said province; and when the Government was transferred to Cuba on May 20th, 1902, it was under the Cuban Constitution which included in its appendix the Platt amendment, adopted March 21st, 1901, which provided in Article VI:

"That the Isle of Pines shall be omitted from the proposed constitutional boundaries of Cuba, the title thereto being left to future adjustment by treaty."

As a member of that convention and of the committee in charge of fixing the political relations between Cuba and the United States, I recollect that when the other provisos, afterwards included in the Platt amendment, were suggested nothing was said as to the Isle of Pines; but the general opposition shown by the Cuban people to the granting of coaling stations undoubtedly caused the matter of the Isle of Pines to be included, some believing, in the United States, that the Isle of Pines could be made the basis of defence for American interests in the Caribbean Sea, or that, if the Isle of Pines was found unsuitable—as it was afterwards shown to be—for coaling and naval purposes, it could be made the basis of negotiation for the acquisition of other sites.

On February 16th, 1903, the Senate of the United States requested the President to inform the Senate as to the then status of the Isle of Pines and what Government was exercising authority and control. President Roosevelt submitted a report from the Secretary of War, Mr. Root, with an endorsement of General Leonard Wood, late Military Governor of Cuba, dated February 20th, 1903, of which the following is a part:

“The Government of the island to-day is in the hands of its municipal officers, duly elected by the people, under the general control of the civil governor of the Province of Havana and the Republic of Cuba. As I understand it, the Government of the Isle of Pines is vested in the Republic of Cuba, pending such final action as may be taken by the United States and Cuba looking to the ultimate disposition of the island. No special action was taken to protect the interests of the citizens of the United States who have purchased property and have settled in the Isle of Pines, for the reason that no such action was necessary. All Americans in the island are living under exactly the same conditions as other foreigners, and if they comply with the laws in force, it is safe to say that they will not have any difficulty or need special protection. At the time these people purchased property, they understood distinctly that the question of ownership of the Isle of Pines was one pending settlement, and in locating there they took the risks incident to the situation.”

On July 2nd, 1903, the Government of Cuba leased to the United States the areas of land and water for the establishment of naval and coaling stations in Guantanamo and Bahia Honda, and on that same date, and as a part of that same transaction, a treaty was signed by which the United States in Article I

“relinquishes in favor of the Republic of Cuba all claim of title to

the Island of Pines situated in the Caribbean Sea near the southwestern part of the Island of Cuba, which has been or may be made in virtue of Articles I and II of the Treaty of Peace between the United States and Spain, signed at Paris on the tenth day of December, eighteen hundred and ninety-eight."

And Article II states that:

"This relinquishment, on the part of the United States, of claim of title to the said Island of Pines is in consideration of the grants of coaling stations in the Island of Cuba heretofore made to the United States of America by the Republic of Cuba."

Had the Cuban Government doubted for a moment that the agreement of the lease would be ratified—as it was at Washington on October 6th, 1903—and the treaty of the Isle of Pines would fail of ratification, it would have cast the two documents into one, making the lease agreement dependent on the success of the treaty of the Isle of Pines.

The Hon. John Hay signed with me, on March 2nd, 1904, another treaty of identical tenor, in which the United States relinquished the claim of title to the Isle of Pines, modifying the previous treaty by making indefinite the time of the exchange of ratifications, which, being definitely fixed in the previous convention, had been the cause of its expiring by limitation. It stands to reason that if the United States does not ratify the treaty it should give back the coaling stations to Cuba.

On November 27th, 1905, the Hon. Elihu Root, Secretary of State, who had repudiated the action of the Assistant Secretary of War as having been done without his knowledge, replied in part to the president of the American Club of the Isle of Pines:

"The island is lawfully subject to the control and government of the Republic of Cuba, and you and your associates are bound to render obedience to the laws of that country so long as you remain in the island. If you fail in that obedience, you will be justly liable to prosecution in the Cuban courts and to such punishment as may be provided by the laws of Cuba for such offences as you commit. You are not likely to have any greater power in the future. The treaty now pending before the Senate, if approved by that body, will relinquish all claim of the United States to the Isle of Pines. In my judgment the United States has no substantial claim to the Isle of Pines. The treaty merely accords to Cuba what is hers in accordance with international law and justice.

"At the time of the Treaty of Peace, which ended the war between the United States and Spain, the Isle of Pines was, and had been for several centuries, a part of Cuba. I have no doubt whatever that it continues to be a part of Cuba, and that it is not and never has been territory of the United States. This is the view with which President Roosevelt authorized the pending treaty, and Mr. Hay signed it, and I expect to urge its confirmation. Nor would the rejection of the pending treaty put an end to the control of Cuba over the island. A treaty directly contrary to the one now pending would be necessary to do that, and there is not the slightest prospect of such a treaty being made. You may be quite sure that Cuba will never consent to give up the Isle of Pines, and that the United States will never try to compel her to give it up against her will."

The treaty was favorably brought to the consideration of the Senate on February 1st, 1906, by Senator Foraker from the Committee of Foreign Relations with an exhaustive and conclusive report; Senators Morgan and W. A. Clark, submitting a minority one against its ratification. It has not yet been voted upon. In the mean while, on April 8th, 1907, the United States Supreme Court decided the case of *Pearcy vs. Stranahan*. Plaintiff brought his action in the Circuit Court of the United States for the Southern District of New York against the then Collector of the Port of New York to recover the value of certain cigars seized by him which had been brought to that port from the Isle of Pines, where they had been produced and manufactured. This seizure was made under the Dingley Act and the regulations of the Secretary of the Treasury thereunder. The Dingley Act provided for the imposition of duties "on articles imported from foreign countries," and in plaintiff's complaint it was asserted that the Isle of Pines was "in possession of and part of the United States" and hence domestic territory. The Government demurred, and the demurrer was sustained, the complaint dismissed and the case brought to the Supreme Court on a writ of error.

In the course of the opinion delivered by Justice Fuller, of which no mention was made by Senator Clapp in his article, the learned court took the ground that the Isle of Pines was foreign territory and declared that when the United States intervened in Cuba "all the world knew that the Isle of Pines was an integral part of Cuba," many of the uncontrovertible facts which have been brought out in this article being quoted to support the arguments in the lucid and just decision.

The Government of Cuba has done more than it was expected in favor of the inhabitants of the Isle of Pines, and in proportion to the taxes collected, the amount of expenditures for roads, schools and other improvements is extraordinary and no other section of Cuba has been, in comparison, so well favored. This periodical agitation of some investors in the lands of the Isle of Pines is to be deplored for the sake of the excellent relations which have been, and are, maintained between the United States and Cuba. These interests attempted before to bring about a settlement of their pretensions by having the Cuban Republic buy their holdings at fancy prices and to devote the lands to public purposes, using the non-ratification of the treaty as a club; but Cuba has confidence in the honesty and good faith of the Senate of this country, and that when such able men as Senator Clapp will give the Cuban side a fair hearing they will bring the matter to an end by doing the proper thing towards Cuba, which is the ratification of the treaty recognizing her rights so forcibly maintained by American statesmen. The one who to-day directs the affairs of this nation, President Taft, while in Havana as Provisional Governor, said in 1906 that it would be "absolutely impossible for the Provisional Government to recognize for one moment that the Isle of Pines is not completely under the jurisdiction of the Provisional Government as a part of the Republic of Cuba," and added that any separation of Cuba and the Isle of Pines "would be a violation of a sacred trust."

American public opinion and fair play will be Cuba's best champions, and the sacred trust will not be violated. The Isle of Pines has been, is and will be Cuba's.

GONZALO DE QUESADA.